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# YIANNOPOULOS: 3 Louisiana Civil Law Treatise, Personal Servitudes, Usufruct-Use- Habitation. West Publishing Co., 1968.

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## Book Review

YIANNPOULOS: 3 Louisiana Civil Law Treatise, Personal Servitudes, Usufruct-Use-Habitation. West Publishing Co., 1968.

Until recently, the bench and bar of this state in dealing with property rights have tended to overlook the fact that Louisiana is a civil law state, and that a civilian approach should be taken in resolving legal issues in that area of the law. Such an approach should begin with research into the applicable code or statutory provisions, followed by a study of the available treatises, and finally, by a consideration of the jurisprudence. Heretofore, judges and lawyers generally have been inclined to look first, and sometimes solely, to prior jurisprudence for the answer to legal problems, and to apply that jurisprudence without considering the treatises which may exist relating to it.

This departure from a civilian approach to the solution of legal problems has been due, perhaps, to the lack of scholarly, comprehensive treatises on the civil law in English. In recent years, however, great strides have been made in Louisiana toward providing access to treatises which formerly were available only in French.<sup>1</sup> Until 1966, treatises in English by modern authors on Louisiana's basic law consisted largely of law review articles. In that year, however, Professor A. N. Yiannopoulos, of Louisiana State University, contributed *Civil Law of Property* (Volume I),<sup>2</sup> a comparative analytical discussion of the Louisiana Civil Code provisions on the law of things, real rights, and real actions. It has been said about that work by Professor Yiannopoulos that "any Louisiana lawyer or judge with a property law problem must commence his research in the Yiannopoulos text."<sup>3</sup>

The same observation should be made about this scholar's most recent contribution to our legal literature, *Personal Servitudes*, Volume III, of the Louisiana Civil Law Treatise series. This treatise encompasses Book II, Title III—"Of Usufruct, Use, and Habitation"—of the Louisiana Civil Code. A comparative approach is employed with discussion of the Roman law and of

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1. PLANIOL, *TREATISE ON THE CIVIL LAW*, 3 volumes (transl. La. St. L. Inst. 1959); GÉNY, *METHODE D'INTERPRETATION ET SOURCES EN DROIT PRIVE POSITIF* (transl. La. St. L. Inst. 1963); 6 AUBRY ET RAU, *DROIT CIVIL FRANÇAIS* (transl. La. St. L. Inst., 6th ed., 1965); 2 AUBRY ET RAU, *DROIT CIVIL FRANÇAIS* (transl. La. St. L. Inst., 7th ed. 1966); AUBRY ET RAU, *DROIT CIVIL FRANÇAIS*, Vol. X, §§ 643-676 and Vol. XI, §§ 677-744 (transl. La. St. L. Inst., 6th ed. 1969).

2. 1 YIANNPOULOS, *CIVIL LAW OF PROPERTY* (1966).

3. 27 LA. L. REV. 153, 158 (1966).

similar legal provisions found in the laws of France, Germany, and Greece. Professor Yiannopoulos has, for the most part, carefully segregated his treatment of each jurisdiction so that a Louisiana lawyer or judge using the work can easily confine his research to the discussion of Louisiana law, if he chooses to do so. However, the importance of considering the analyses of the law of other jurisdictions, particularly those of France, cannot be over-emphasized, because our courts in interpreting our own laws are now more frequently consulting the interpretations placed on similar laws of foreign jurisdictions.

Chapter I, entitled "Usufruct: General Principles," is subdivided into two parts. The author begins his work appropriately by explaining all of the various kinds of usufructs, including perfect and imperfect, conventional and legal, universal usufruct, usufruct under universal or particular title and usufruct in undivided shares. In the second part he discusses the methods by which usufructs may be created. This will be of particular assistance to lawyers who are called upon to draft wills placing restrictions on legatees without the use of the trust device, and to lawyers and judges who are confronted with problems of prohibited substitutions and fidei commissa. Part two contains an extensive discussion of the problems of successive usufructs and of donations of usufruct to forced heirs, to a surviving spouse, and to strangers. The author also discusses fiscal legislation, both state and federal, pertaining to the valuation of usufruct for estate and inheritance tax purposes, problems which are not inconsequential to attorneys drafting estate plans.

Chapter II, entitled "Rights of the Usufructuary," is subdivided into six parts. The substance of the chapter is revealed by the titles of these parts: "The Usufructuary's Right of Enjoyment in General"; "Trees in Usufruct"; "Products of the Subsoil in Usufruct"; "Herd of Animals in Usufruct"; "Shares of Stock in Usufruct"; "Business Enterprise in Usufruct"; and "Rights in Usufruct." Our Louisiana code articles on these subjects have almost exact equivalents in foreign civil codes, so it can readily be seen that the author's discussion of comparative law on these provisions of the Civil Code will be most helpful in understanding and solving the problems which have arisen and which may arise in Louisiana. Of particular interest and importance to Louisiana lawyers and judges is the author's treatment of the subject of mineral rights and the usufructuary.

Many of the landmark Louisiana cases in this complex area of the law are cited, discussed, and criticized, and one cannot help but gain new insight to this problem from the incisive commentary of this author.

Chapter III, "Legal Powers of the Usufructuary," treats generally of the powers of administration of the usufructuary, his power to alienate or encumber the usufruct or the property subject to usufruct, and his recourse to legal action for the protection of the usufruct. Chapter IV, "Obligations of the Usufructuary," deals with the security which the usufructuary must post for the protection of the naked owner prior to taking possession of the usufruct and the specific obligations of the usufructuary with regard to the preservation and upkeep of the property subject to the usufruct. While the subject matter of both of these chapters applies to all areas of the law pertaining to usufruct, this writer believes that the discussions contained therein, particularly when considered with legal usufructs in Chapter VII, are of particular usefulness in dealing with the rights and obligations of a surviving spouse holding a usufruct on the community property estates of his or her minor children.

Chapter V is entitled "Rights and Obligations of the Naked Owner." Much of the material which ordinarily would be covered in this chapter was discussed in the two preceding chapters dealing with the rights and obligations of the usufructuary. The author concisely points out, however, that the naked owner has a number of rights and obligations relating to the property which are often overlooked in dealing with usufructs.

The final two chapters dealing with usufruct are, in this writer's opinion, the two most interesting and perhaps most important. Chapter VI is entitled "Termination of the Usufruct." It is divided into two subtitles which discuss the causes and the consequences of termination. Professor Yiannopoulos points out that there are at least eight specific ways in which a usufruct may terminate, other than by death, and that even the death of the usufructuary does not necessarily bring the usufruct to an end, e.g., as in the case of the testamentary creation of a single usufruct with right of survivorship of co-beneficiaries or the creation of successive usufructs.

Legal usufructs, the subject matter of and title of Chapter VII, are those usufructs which are created by operation of Lou-

isiana law. The statutes creating those usufructs are scattered throughout the Civil Code, but the general statutes regulating usufruct are as applicable to legal usufructs as they are to conventional usufructs. This chapter contains a comprehensive discussion and compilation of those myriad code articles so important to the general practitioner. The usufruct of the surviving spouse, the parental right of enjoyment over the property of minor children, and the marital portion and widow's portion in usufruct are all discussed in depth. Chapter VIII, entitled "Use, Habitation, and Limited Personal Servitudes," is limited to a discussion of articles 626-645 of the Louisiana Civil Code and their continental counterparts. As is appropriate for a subject which has not created many legal problems in Louisiana, the discussion is short and concise.

Thus far these remarks have been limited to the textual content of the book, but I would be remiss in failing to comment on several other features of the treatise. It is extensively footnoted with citations to Louisiana cases, correlative code articles, French and other continental commentators, law review articles, and other reference sources. A table of statutes with cross references to sections of the book, an alphabetical table of cases, and a well constructed index is included. In short, it is a valuable and excellent addition to our too-sparse collection of Louisiana civil law materials, and this writer is confident that it will be widely used and quoted by the courts and lawyers of this state.

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